

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

L.J. ZUCCA, INC.

Plaintiff,

v.

ALLEN BROS. WHOLESALE
DISTRIBUTORS INC., COOPER-BOOTH :
WHOLESALE COMPANY, EBY-BROWN :
COMPANY, LLC, and KLEIN CANDY :
CO. LP,

Defendants.

C.A. No. 1:07-cv-00002

Removed from Superior Court,
New Castle County, Delaware
C.A. No. 2572-N

JURY TRIAL DEMANDED

**ANSWER AND JURY TRIAL DEMAND OF
DEFENDANT COOPER-BOOTH WHOLESALE COMPANY**

Defendant Cooper-Booth Wholesale Company, by and through its undersigned counsel, hereby answers the First Amended Verified Complaint of Plaintiff L.J. Zucca, Inc. and states as follows:

PRELIMINARY STATEMENT

The allegations of this paragraph state legal conclusions to which no response is required. To the extent that a response is required, Answering Defendant Cooper-Booth Wholesale Company denies the allegations of this paragraph.

THE PARTIES

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. Admitted.

6. Admitted with respect to Answering Defendant Cooper-Booth Wholesale Company. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to defendants other than the Answering Defendant and, therefore, said allegations are denied.

JURISDICTION AND VENUE

7. Answering Defendant Cooper-Booth Wholesale Company admits only that the United States District Court for the District of Delaware has subject matter jurisdiction over this case and controversy. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, said allegations are denied.

FACTUAL BACKGROUND

8. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

9. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

10. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

11. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

12. Denied.

13. Denied.

14. Denied.

ALLEGATIONS AGAINST INDIVIDUAL DEFENDANTS

15. Denied.

16. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

17. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

18. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

19. Denied.

20. Denied.

21. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

22. Denied.

23. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

24. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

25. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

26. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

27. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

28. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

29. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

30. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

COUNT I
(Violations of the Delaware Unfair Cigarettes Act)
(Against All Defendants)

31. Answering Defendant Cooper-Booth Wholesale Company repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint as if fully set forth herein at length.

32. Denied.

33. Denied.

34. Denied.

COUNT II
(Tortious Interference with Existing Contracts)
(Against All Defendants)

35. Answering Defendant Cooper-Booth Wholesale Company repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint as if fully set forth herein at length.

36. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

COUNT III
(Tortious Interference with Prospective Economic Advantage)
(Against All Defendants)

43. Answering Defendant Cooper-Booth Wholesale Company repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint as if fully set forth herein at length.

44. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

45. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

COUNT IV
(Unfair Competition)

51. Answering Defendant Cooper-Booth Wholesale Company repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint as if fully set forth herein at length.

52. Denied.

53. Denied.

54. Denied.

COUNT V
(Injunction)

55. Answering Defendant Cooper-Booth Wholesale Company repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint as if fully set forth herein at length.

56. Denied.

57. Answering Defendant Cooper-Booth Wholesale Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, said allegations are denied.

58. Denied.

69. Denied.

60. Denied.

WHEREFORE, Defendant Cooper-Booth Wholesale Company demands judgment in its favor, dismissal of the First Amended Verified Complaint with prejudice, an award of attorneys' fees and costs and such other relief as the Court deems just and proper.

ADDITIONAL DEFENSES

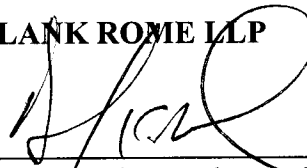
1. Plaintiff L.J. Zucca, Inc.'s claims are barred in whole or in part by the doctrine of unclean hands.
2. Plaintiff L.J. Zucca, Inc.'s claims are barred in whole or in part by the doctrine of laches.
3. Plaintiff L.J. Zucca, Inc.'s claims are barred in whole or in part by the statutes of limitation/repose.
4. Plaintiff L.J. Zucca, Inc.'s claims are barred in whole or in part for failure to state a claim.
5. Plaintiff L.J. Zucca, Inc.'s claims are barred in whole or in part by the doctrine of estoppel.
6. Plaintiff L.J. Zucca, Inc.'s claims are barred in whole or in part by the doctrine of waiver.
8. Plaintiff L.J. Zucca, Inc.'s claims are barred in whole or in part by the doctrine of res judicata and/or issue preclusion.
9. The Delaware Unfair Cigarette Sales Act is inapplicable for the reasons set forth in 6 Del. C. § 2605.
10. The Delaware Unfair Cigarette Sales Act is preempted by federal law.
11. The Delaware Unfair Cigarette Sales Act is unconstitutional under the Delaware Constitution.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendant Cooper-Booth Wholesale Company demands trial by jury as to all issues so triable.

Respectfully submitted,

BLANK ROME LLP



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Dated: January 10, 2007

AND

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CERTIFICATE OF SERVICE

I, David K. Sheppard, Esquire, hereby certify that on January 10, 2007, I electronically served a copy of the **ANSWER AND JURY TRIAL DEMAND OF DEFENDANT COOPER-BOOTH WHOLESALE COMPANY** on the following counsel of record:

Michael F. Bonkowski, Esquire
Kimberly M. Large, Esquire
Saul Ewing LLP
222 Delaware Avenue, Suite 1200
P.O. Box 1266
Wilmington, DE 19899

/s/ David K. Sheppard

David K. Sheppard
I.D. No. 4149